THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.2640 of 2007

Date: 10.7.2007

Between:

Varla Kondaiah and 175 others.

....Petitioners

and

The Government of A.P. rep by its
Principal Secretary,
Department of Irrigation & Command Area Development,
Secretariat, Hyderabad and 2 others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.2640 of 2007

O R D E R:

The petitioners are residents of Chinnavaram Village, Gopavaram Mandal, Kadapa District. Through a notification issued on 2.2.1978, under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), the lands of the petitioners and some others in Obulam Village were notified for acquisition for the purpose of Somasila Project. The Land Acquisition Officer (LAO, for short) passed award No.2/80-81 dated 10.5.1980 determining compensation for the acquired land. Some of the awardees sought for a reference under Section 18 of the Act, not being satisfied with the compensation awarded by the L.A.O. The reference was taken up by the Court of Senior Civil Judge, Rajampeta as O.P.No.35 of 1995. Through common judgment and decree dated 18.5.1996, the trial Court enhanced the compensation, almost by 100%.

On coming to know about this development, the petitioners filed an application for certified copy of the judgment on 26.6.1996, and obtained the same on 1.10.1996. On 7.11.1996 the petitioners submitted applications before the L.A.O under Section 28-A of the Act, for re-determination of the compensation for their land. In the meanwhile, the appeal preferred by the State against the judgment and decree in O.P.No.35 of 1995 was dismissed by this Court on

30.3.2001.

The petitioners filed W.P.No.22102 of 2001 before this Court complaining that the L.A.O did not take any steps on their applications, filed under Section 28-A of the Act. The writ petition was disposed of at the admission stage on 5.4.2002 directing the L.A.O to pass appropriate orders on the applications of the petitioners. A contempt case in CC No.614 of 2003 was also filed alleging that the L.A.O did not comply with the direction of this Court in the writ petition. At that stage, the Land Acquisition Officer passed an order dated 2.9.2003 rejecting the applications of the petitioners. It was stated that there is no clear proof as to the date of submission of the applications and that there are over writings and corrections on the particulars as to the date of submission of the applications for certified copy and the date of furnishing thereof. The petitioners challenge the said communication by filing this writ petition.

It is contended that there is clear evidence and proof to show that the application was filed on 7.11.1996 and that there are no over-writings or corrections whatsoever about the date on which the certified copy in the O.P. was applied for and received. It is alleged that the grounds mentioned in the impugned proceedings are evasive, uncertain and non-existant.

On behalf of the respondents, a counter affidavit is filed reiterating the contents of the impugned order. The proceedings that have ensued so far have been referred to. It is stated that the applications filed by the petitioners does not accord with law and as such they were rejected.

Heard Sri M.Subrahmanyam, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

The parliament introduced Section 28-A of the Act, with an object of extending the benefit of enhancement of the compensation by civil Court to the persons whose lands were acquired through the same notification but did not seek reference under Section 18 of the Act. However, the extension of this benefit is subject to certain conditions viz., the application must have been made and the certified copy of the judgment of the trial Court is obtained, within the respective time limits stipulated therefor. It is only when these conditions are complied with that the benefit under Section 28-A of the act would be extended to the persons whose lands were acquired through the same notification issued under Section 4(1) of the Act.

In the instant case, the civil Court disposed of O.P.Nos.35 of 1995 and batch in respect of the lands acquired through the same notification, and covered by the same award, on 18.5.1996. The petitioners categorically stated that they applied for certified copy of the judgment and decree on 26.6.1996, the copy of which was made ready on 30.9.1996 and it was delivered to them on 1.10.1996. It is their specific case that they have submitted applications under Section 28-A of the Act on 7.11.1996 duly enclosing the certified copy of the judgment and decree in the O.P.

A perusal of the impugned proceedings discloses that the LAO was not convinced on two counts viz., about the manner of presentation of applications and the date on which the certified copy was obtained. The relevant portion reads as under;

> "On scrutiny of the applications, the claimants have given a certified copy of the judgment in LAOP No.35 of 1995 and batch. But there is a no seal or signature of the Special Deputy Collector in token of receipt of the certified copy. Further on verification of certified copy, the dates have been altered for getting limitation. Hence, the applications under Section 28-A cannot be considered due to the tampering of records by the claimants for the purpose of limitation."

A perusal of the above order discloses that the Special Deputy Collector was not clear as to the manner in which the applications of the petitioners were received. It is not in dispute that the applications bear the seal of his office and the date viz., 7.11.1996. If there was no seal or signature of the Special Deputy Collector separately, the petitioners cannot be blamed for it. In the counter affidavit, it is not even alleged that the petitioners did not submit the applications on 7.11.1996. On the other hand, the averments read as under;

> "In reply to the averments made in paras 6 and 7 of the petitioners' affidavit it is submitted that it may be true that the petitioners have submitted applications under Section 28-A of the Land Acquisition Act before this Respondent on 7.11.1996 for re-determination of the market value as per the order and decree in LAOP No.14 of 1995 dated 18.5.1996. But there was no seal or signature of the then Special Deputy Collector."

The respondents cannot take advantage of lapse, if any, on their part and the petitioners cannot be penalised for the same. Further, existence of the seal and signature of the LAO on the application filed under Section 28-A of the Act is not a requirement under any provision of law,

So far as the second aspect is concerned, except taking a bald and general plea that the dates have been altered to get the benefit of limitation, the details thereof are not at all indicated. The petitioners have submitted the certified copy of the judgment before the LAO. A copy of the same was obtained from the LAO with due certification. The endorsement as regards the date of submission of applications etc., are written in clear letters and numbers and there is not even an indication of any alteration or interpolation. Therefore, the stand taken by the Special Deputy Collector cannot be sustained. Valuable statutory rights of the citizens cannot be defeated on the basis of unfounded and unverified allegations.

One aspect to be taken note of is that the applications are stated to have been filed on 7.11.1996 and the petitioners approached this Court only in the year 2001 complaining inaction. Thereafter, the Special Deputy Collector passed an order on 2.9.2003 rejecting their case. This writ petition is filed only in the year 2007. Therefore, there is a clear lapse on the part of the petitioners in pursuing their remedies. The public exchequer cannot be burdened with the liability to pay interest for the period during which the petitioners were not diligent. Therefore, the amount of compensation payable to the petitioners in the event of redetermination shall not carry interest upto October, 2007.

The impugned proceedings are accordingly set aside and the Special Deputy Collector is directed to take necessary steps to re-determine the compensation in respect of the lands of the petitioners acquired through the notification under Section 4(1) of the Act dated 15.12.1977. It is also directed that the petitioners shall be entitled to be paid only the difference of compensation and the solatium and interest thereon would become payable only if the amounts remain unpaid

after October, 2007, with effect from that date.

The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

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10.07.2007

msv

Note:
LR copy to be marked.